

**FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
Auction of H Block Licenses in the 1915-1920 MHz and 1995-2000 MHz Bands;)	AU Docket No. 13-178
Comment Sought on Competitive Bidding)	
Procedures for Auction 96)	

REPLY COMMENTS OF ALOHA PARTNERS II, LP

Aloha Partners II, LP (“Aloha”), by counsel and pursuant to the Commission’s Public Notice of July 14, 2013¹, hereby submits its reply comments in the captioned proceeding. For the reasons set forth below, Aloha urges the Commission not to include any package bidding procedures in the upcoming “H Block” auction, Auction No. 96.

I. Discussion

A. Aloha’s Perspective and Experience

Aloha, together with its related predecessors, has been actively involved in wireless for several decades. It has provided cellular service in markets covering over two million pops; it has offered an innovative ESMR service in the Hawaiian markets; it was one of the first carriers to test wireless broadband; and it has participated successfully in a number of FCC wireless auctions and spent over \$100 million for licenses in the past ten years.. Notably, Aloha has done all of the above as a small business, as well as a qualified Designated Entity. Given the above, Aloha is particularly well qualified to provide comment on the procedures to be utilized in the H Block auction.

¹ Auction of H Block Licenses in the 1915-1920 MHz and 1995-2000 MHz Bands; Public Notice, DA 13-1540 (rel. July 15, 2013).

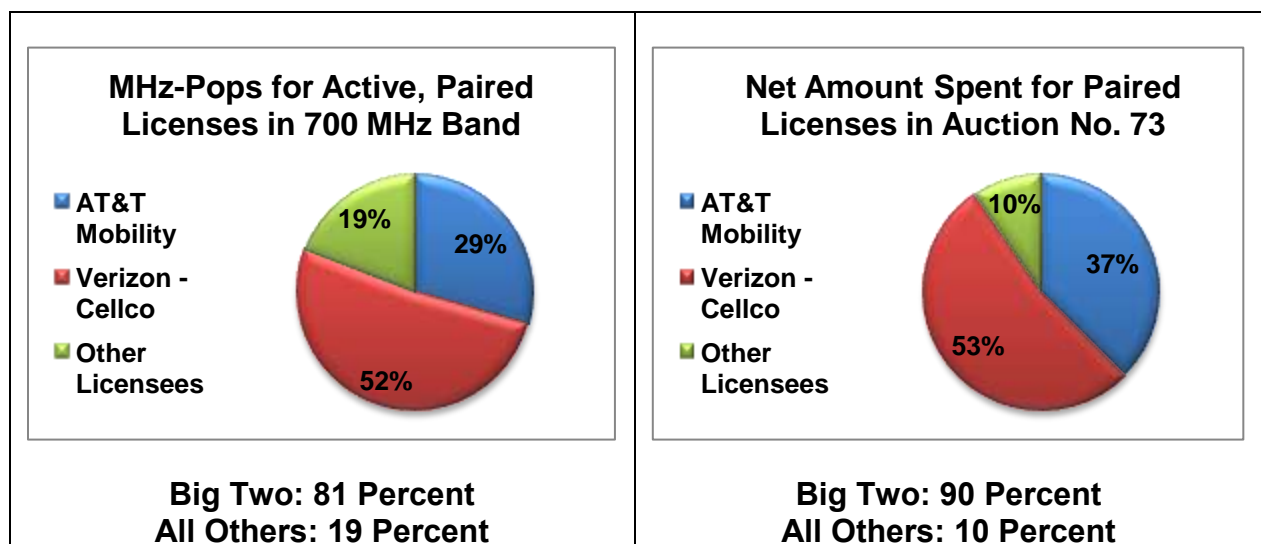
B. In the H Block Auction, the Commission Should Comply with the Over-Archiving Statutory Mandates Governing FCC Auction Design

When the Commission was granted authority to utilize competitive bidding for wireless license awards, Congress carefully crafted over-arching criteria, directly into the Communications Act², pursuant to which the auctions were to be designed. Chief among these is Section 309(j)(3)(B). That section expressly provides that, in designing auction procedures, the Commission “shall” seek to avoid excessive concentration of licenses and to strive to disseminate licenses among a wide variety of applicants, including small businesses. In addition, the mandate set forth in Section 309(j)(4)(C) provides that the Commission “shall” provide economic opportunity for a wide variety of applicants, including small businesses, to participate in auctions. And Section 309(j)(4)(D) requires that small businesses be given the “opportunity to participate in the provision of spectrum-based services. . .” through auctions.

To date, the Commission has wrestled to comply with these Congressional mandates. Nevertheless, results from auction 73 demonstrate how difficult it is for the Commission to balance its obligations. For example, as depicted in the following chart, in Auction No. 73 (generally regarded as the last major wireless auction), two carriers alone obtained over 80 percent of the licensed spectrum.³

² The Communications Act of 1934, as amended, 47 U.S.C. § 309(j)(4)(D) (the “Act”).

³ The charts below were submitted by the 700 MHz Block A Good Faith Purchasers Alliance in RM No. 11592, and vividly demonstrate the problem of high concentration of license awards through auctions.



This level of concentration suggests strongly that the Commission must be even more diligent in complying with its statutory obligations to disseminate licenses to a wide variety of applicants. Aloha respectfully submits that use of package bidding in any form, including hierarchical package bidding (“HPB”) would be contrary to these Congressional mandates, and would result in increased licensee concentration.

C. Use of HPB Would Be Very Detrimental to Designated Entity Bidders

Experience in Auction 73 indicates that very few smaller businesses can bid for the large combinational blocks, and that HPB helps larger companies. This is because HPB is a strategy that is far more available only to the largest, best financed bidders. Were there any questions regarding this fact, one need only review the comments submitted in this proceeding on August 5, 2013. There, with only two exceptions, every party who commented on HPB advocated that it not be utilized, except for AT&T and T-Mobile – two of the largest carriers in the nation.⁴ Moreover, as United States Cellular Corporation (“U.S. Cellular”) observed in its comments in this proceeding, at 7, in prior auction proceedings the Commission itself has

⁴ Even other established large and medium size companies, such as Sprint, U.S. Cellular and Cellular South, vigorously opposed use of HPB for the H Block auction.

recognized the potential unfairness associated with package bidding. Specifically, in its auction of narrowband PCS licenses, the Commission explained that a “threshold” problem associated with HPB could lead to unwarranted discounts to larger bidders.⁵

D. HPB Carries with it Unintended Benefits for Larger Players

As addressed above, when the Commission initially considered (and rejected) HPB in the context of narrowband PCS, the Commission recognized that HPB carried with it the potential for unintended advantages to larger carriers. Experience in Auction No. 73 confirmed the unintended benefit to large carriers. Specifically, in the 700 MHz auction (Auction No. 73) one of the nation’s largest carriers was able to bid approximately \$2 Billion more than it would have otherwise been authorized to bid, solely through the skillful use of HPB. Review of bidding records regarding the final round of the 700 MHz auction demonstrates that one applicant was able to use 85 million more bidding units than it was entitled to by using HPB to bid for the Upper “C” block. At the end of Round 161, absent HPB, that applicant would have been eligible to bid 306 million units. Yet, the applicant actually used 391 million bidding units, or 85 million bidding units more than it was otherwise eligible to bid. These 85 million biddings units allowed this large carrier to purchase \$2 billion worth of spectrum that it was not eligible for, except through the skillful manipulation of HPB.

⁵ There, the Commission explained that: “[T]he difficulty that multiple bidders for the single licenses ... that constitute a larger package may have in outbidding a single bidder on the larger package, even though the multiple bidders may value the sum of the parts more than the single bidder values the whole. This may occur because bidders for parts of a larger package each have an incentive to hold back in the hope that a bidder for another part will increase its bid sufficiently for the bids on the pieces collectively to beat the bid on the larger package.” *Auction of Regional Narrowband PCS Licenses Scheduled for September 24, 2003*, Public Notice, DA 03-1065, p. 4 (Apr. 3, 2003).

E. Use of HPB Would Effectively Increase the Size of License Areas – Which are Already Larger than Appropriate

In the H Block Report and Order⁶, the Commission determined that licenses for H Block spectrum should be awarded on an Economic Area (“EA”) basis. In so doing, the Commission pointed to a number of public interest benefits associated with licensing on an EA basis. For example, the Commission decided that (1) EA licensing “has been used for similar bands and is a useful and appropriate geographical approach” (Second R&O, at para. 37); (2) “licensing on an EA-basis strikes the appropriate balance in license size for this band” (Second R&O, at para. 38); (3) “adopting the same license size geographic area as is used in adjacent bands may encourage rapid deployment in and use of the spectrum” (Second R&O, at para. 38); “EAs may present opportunities for efficiencies that other geographic license sizes would not offer” (Second R&O, at para. 38); “EAs will facilitate access to spectrum for both small and large carriers” (Second R&O, at para. 39); “EAs are large enough that large carriers can aggregate them up to larger license areas, including into Major Economic Areas (MEAs) and Regional Economic Area Groupings (REAGs), thus achieving economics of scale (Second R&O, at para. 39); and “licensing the spectrum on an EA basis best balances the Commission’s public interest goals. . . .” (Second R&O, at para. 42).

Having already concluded that Economic Areas were appropriate for licensing areas, and explained why that serves the public interest, there is no reason to effectively change that determination now. Use of HPB would do just that.

⁶ Service Rules for Advanced Wireless Services H Block – Implementing Section 6401 of the Middle Class Tax Relief and Jobs Creation Act of 2012, WT Docket No. 12-357, Report and Order, FCC 13-88, FCC Rcd ____ (2013).

II. Conclusion

For all of the foregoing reasons, the Commission should utilize its proven SMR auction design for Auction No. 96. In order to comply with the Congressional mandate for widespread distribution of licenses, and avoid undue (and unnecessary) complications associated with HPB.

Respectfully submitted,

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